

APPROVED BY ACTION OF THE FACULTY SENATE JUNE 2, 1998

Georgia Southern University

Intellectual Property Policy

I. PREAMBLE

Georgia Southern University, hereinafter referred to as the UNIVERSITY, is dedicated to teaching, scholarship, and the extension of knowledge to the public. Personnel at the University recognize as two of their major objectives the production of new knowledge and the dissemination of both old and new knowledge. Inherent in these objectives is the need to encourage the production of creative and scholarly works and the development of new and useful materials, devices, processes, and other inventions, some of which may have potential for commercialization. Such activities contribute to the professional development of the individual staff members involved, enhance the reputation of the University, provide additional educational opportunities for participating students, and promote the general welfare of the public at large.

Such creative and scholarly works and inventions which have commercial potential may be protected under the laws of various countries that establish rights called INTELLECTUAL Property, a term that includes patents, copyrights, trade secrets, trademarks, plant variety protection, and other rights (definitions are provided in Section V of this document). Such Intellectual Property often comes about because of activities of the University's faculty and other employees who have been aided wholly or in part through use of facilities of the University. It becomes significant, therefore, to ensure the utilization of such Intellectual Property for the public good and to expedite its development and marketing. The rights and privileges, as well as the incentives, of the authors, creators, or inventors hereinafter referred to as the "Originators" must be preserved so that the use of their abilities and the abilities of others at the University may be further encouraged and stimulated.

The Board of Regents of the University System of Georgia has established an Intellectual Property Policy which stipulates that: "Each institution of the System is required to develop policies and procedures for the administration of this Intellectual Property Policy." Therefore, in order to establish the respective rights and obligations of the University, its faculty, students, and other employees in Intellectual Property of all kinds now and hereafter existing and of all countries, regions, or other political entities, the University hereby establishes this Intellectual Property Policy.

II. RIGHTS AND EQUITIES IN INTELLECTUAL PROPERTY

A. Sponsor-Supported Efforts

Sponsored project agreements with the University or one of its foundations often contain specific provisions with respect to ownership of Intellectual Property developed during the course of such work, in which case the terms of the sponsored project agreement shall

establish ownership. When the sponsored project agreement is silent on the matter, all rights in intellectual property shall vest in the University.

Income, if any, from such Intellectual Property shall be shared with the Originator, subject to the sponsor's requirements, in accordance with Section III.J.

B. University-Assigned Efforts

Ownership of Intellectual Property developed as a result of University-assigned efforts shall reside with the University. Copyrightable works created by an employee in the course of his/her employment are considered to be works made for hire under copyright law, with ownership vested in the employer. However, any income from such Intellectual Property shall be shared with the Originator, in accordance with Section III.J. The above notwithstanding, a faculty member's or student's general obligation to produce scholarly and creative works does not constitute a work for hire or a specific University assignment.

C. University-Assisted Individual Effort

Ownership of Intellectual Property developed by faculty, staff, and students who make more than purely incidental use of University resources shall be shared by the Originator and the University. For purposes of this Intellectual Property Policy, the use of the following University resources generally shall not result in shared ownership: all resources available to the public without charge; University-owned/leased office, lab, or studio space or equipment; computer equipment; library resources, including electronic resources; and Internet access.

Use of the following University resources in the production of Intellectual Property generally shall constitute more than purely incidental use, shall be defined as University-Assisted Individual Effort, and shall result in shared ownership of the Intellectual Property under this Section: resources provided by University-funded and/or University Foundation-funded grants, and stipends; University employees (other than faculty) within the employment period; long distance telecommunication services and other cost-added supplies and services; and University facilities other than offices, labs, studios, or library.

Income, if any, from such Intellectual Property shall be shared as described in Section III.J.

D. Individual Effort

Ownership of Intellectual Property developed by faculty, staff, and students of the University shall reside with the Originator of such Intellectual Property provided that: the Intellectual Property was not developed in accordance with the terms of a sponsored project agreement (see Section II.A); the Intellectual Property was not developed by faculty, staff, or students as a specific University assignment (see Section II.B); and there was no significant use of University resources in the creation of such Intellectual Property (see Section II.C). The Originator of the Intellectual Property shall have the opportunity to demonstrate that this

classification applies.

E. Other Efforts

Ownership of Intellectual Property developed by faculty, staff, and students of the University under other efforts is determined according to the criteria specified in Sections II.A. through II.D. above. Such efforts include, but are not limited to, consulting for outside organizations, collaborating with non-University personnel, or serving on non-University boards, committees, task forces, etc. Any agreement should include a statement that the faculty member has intellectual property obligations to the University and this Intellectual Property Policy should be attached to the agreement. In the event that there is any conflict between the University personnel's obligations to this Intellectual Property Policy and their obligations to the entity or collaborative arrangement for which they provide these efforts, the obligations to this Intellectual Property Policy shall control.

III. ADMINISTRATIVE PROCEDURES

A. Responsibility and Organization

The administration of the principles and policies set forth in this document is the responsibility of the Provost and Vice President for Academic Affairs, whose office shall do so through the Office of Research Services and Sponsored Programs and with the advice of the University Intellectual Property Committee and a University Legal Advisor. The Intellectual Property Committee shall be appointed by the President and consist of no less than five, nor more than nine, members. One of these members shall be designated by the President to serve as Chair. The committee shall include representatives of the Provost and Vice President for Academic Affairs, the Vice President for Business and Finance, and the Faculty Senate. The Chair may add *ad hoc* members as necessary.

B. Disclosure of Intellectual Property

For circumstances meeting the criteria for II.A through II.C., University personnel shall promptly provide the Provost and Vice President for Academic Affairs with a disclosure describing their creative and scholarly works and new material, devices, processes, or other inventions which may have commercial potential; using forms provided by the Office of Research Services and Sponsored Programs. University personnel shall also cooperate with the Office of Research Services and Sponsored Programs and sign all papers deemed necessary to protect and commercialize Intellectual Property covered by this Intellectual Property Policy.

Disclosures are not required for circumstances meeting the criteria delineated in Section II.D. or for works of authorship where there is no intent to commercially exploit the intellectual property (examples include, but are not limited to, articles for publication in scholarly or professional journals and instructional or research material for internal use), even though the ownership of the copyright may reside in the University as determined by Sections II.A., II.B., or

II.C. In cases where disclosure is not required, the University shall assign the copyright to the author for publication purposes.

C. Obligations of Principal Investigators/Project Directors

Principal Investigators/Project Directors shall be responsible for informing coworkers of their rights and obligations under contracts, grants, and the like before the initiation of research or other sponsored projects.

D. Confidentiality

Certain contractual obligations and governmental regulations require that information be maintained in confidence. Some works, such as certain computer software, may best be protected and licensed as trade secrets. Additionally, inventions must be maintained in confidence for limited periods to avoid the loss of patent rights. Accordingly, the timing of publications is important, and University personnel shall use their best efforts to keep the following items confidential (to the extent allowed by law): all information or material designated confidential in a contract, grant, or the like; all information or material designated or required to be maintained as confidential under any applicable governmental statutes or regulations; and all information relating to Intellectual Property developed by University personnel which may be protected under this Policy until application has been made for protection.

E. Collaboration

Collaboration between University personnel and persons not employed or associated with the University, including researchers at other universities or companies, can result in the development of Intellectual Property jointly owned by the University and other persons or their employers. Protection and commercialization of such joint Intellectual Property can be difficult without extensive cooperation and agreement among the owners. Accordingly, it is important for University personnel involved in, or contemplating collaborative activities that may result in, the development of Intellectual Property to advise their immediate supervisors and the Office of Research Services and Sponsored Programs of such activities.

F. Administration of "SponsorSupported Efforts" (II.A.) and "University-Assigned Efforts" (II.B.)

The Intellectual Property Committee has the responsibility to evaluate Intellectual Property developed through Sponsor-Supported Efforts and University-Assigned Efforts, and to determine whether to administer such Intellectual Property by undertaking those efforts it determines to be appropriate to protect and license or otherwise commercialize such Intellectual Property.

G. Administration of "University-Assisted Individual Effort" (II.C.)

Any Intellectual Property which is the result of UNIVERSITY-Assisted Individual Effort,

shall be administered by the Originator unless the Originator and the Committee agree to have it administered by the Office of Research Services and Sponsored Programs. Such Intellectual Property which is administered by the Office of Research Services and Sponsored Programs shall be treated as "University-Assigned Effort" (II.B.) Intellectual Property and shall require the Originator to assign to the University his/her share of the ownership rights in such Intellectual Property, but the Originator shall retain the right to a division of revenue as prescribed by section III. J. of this Policy.

H. Administration of "Individual Effort" (II.D.)

Intellectual Property which is administered by the Originator shall be assigned to the Originator under a simple agreement which provides for periodic reports describing the Originator's administrative activities, generation of payments or royalties, and if appropriate payment to the University of a portion of net revenue from the exploitation of the Intellectual Property.

"Individual Effort" Intellectual Property may be assigned to the University to be treated and administered as UNIVERSITY-Assigned Effort (II.B.) Intellectual Property if both the Committee and the Originator agree to do so (see the discussion in Section III.G.).

I. Declined Intellectual Property

Whenever the University chooses not to administer Intellectual Property or chooses to cease administering Intellectual Property, such Intellectual Property, subject to any obligations to a sponsor, may be released to the Originator to dispose of as the Originator sees fit.

J. Revenue Sharing with Originators

The proposed division of net revenue is presented below. Net revenue is defined as gross receipts received by the University from license activity minus contract amounts due sponsors, if any, and the out-of-pocket costs incurred by the University in protecting and licensing the Intellectual Property:

REVENUE DISTRIBUTION

REVENUE DISTRIBUTION	Originator	Originator's Department	Originator's Research Program	Georgia Southern University Research and Service Foundation*	Faculty Development, Research & Service Committee*
SPONSOR SUPPORTED	70%	5%	5%	10%	10%
UNIVERSITY ASSIGNED	50%	15%	10%	10%	15%
UNIVERSITY ASSISTED	70%	5%	5%	10%	10%
INDIVIDUAL EFFORT	100%	-	-	-	-
OTHER EFFORTS	To be determined on a case-by-case basis.				

The Originator's share of net revenue shall be divided (equally) among joint Originators of jointly developed Intellectual Property unless a written statement signed by all joint Originators which provides for a different distribution is filed with the University prior to the first distribution of shared net revenue.

The percentage for the Originator's Research Program applies only while the Originator is employed by, and conducting research at, the University. If this is not the case, this share is reallocated to the Faculty Development, Research & Service Committee.

In the event the Intellectual Property is licensed to the Originator, or the Originator has a *significant financial interest* in an external entity which holds license rights,** the Originator shall waive the right under the University Intellectual Property Policy to receive the Originator's share of royalties identified above (except when the development of the Intellectual Property meets the criteria established for the INDIVIDUAL Effort

* For Sponsor-Supported Efforts, University-Assigned Efforts, and University-Assisted Efforts, the University Intellectual Property Committee may recommend that a lower percentage of the net revenue be distributed to the Georgia Southern University Research and Service Foundation and the Faculty Development, Research & Service Committee if it seems evident that use of University resources warrants smaller payment provisions.

** Under both of these circumstances, either the Originator or an entity in which he/she has a significant financial interest already is taking a significant share of the royalties "off the top."

category, in which case this clause does not apply).

In the event the Originator does not receive the Originator's share, that share shall be distributed to the other parties in the proportions detailed above.

In the event the terms of the license of the Intellectual Property provide the University with equity, or an option to acquire equity, in the entity which licenses the Intellectual Property, the share of such equity due to Originators as identified above will be distributed to the originators when such equity is transferable or convertible to cash.

K. Interpretation, Decision, and Appeal

Cases where the Originator and the University agree to the classification and proposed mechanism of commercialization of the intellectual property will be processed by the University in accordance with this policy. All cases in which questions arise as to equities, rights, division of royalties, or any other Intellectual Property-related matter shall be referred to the Intellectual Property Committee for consideration, interpretation of policy, and decision. Appeal of an Intellectual Property Committee decision shall be to the Provost and Vice President for Academic Affairs, then to the President, and, finally, to the Board of Regents. Appeals within the University must be made in writing within sixty (60) days of written notice of a final decision. Appeals to the Board of Regents shall be made in accordance with Article IX of the Bylaws of the Board, which requires that all appeals be filed within twenty (20) days of the final decision of the President of the University.

IV. PREVAILING POLICY AND HEIRS AND ASSIGNS

A. Prevailing Policy

In the event of conflicts between the Intellectual Property Policy of Georgia Southern University and the Intellectual Property Policy of the Board of Regents of the University System of Georgia, the Intellectual Property Policy of the Board of Regents shall prevail.

B. Heirs and Assigns

The provisions of this Policy shall fix the interests of and be binding upon the heirs and assigns of (1) all University personnel and (2) all others who agree to be bound by it.

V. DEFINITIONS

Intellectual Property shall be deemed to refer to copyrighted materials, patentable materials, software, trademarks, and trade secrets, whether or not formal protection is sought.

Copyrighted Materials shall include the following: (1) books, journal articles, texts, glossaries, bibliographies, study guides, laboratory manuals, syllabi, tests, and proposals; (2) lectures, musical or dramatic compositions, unpublished scripts; (3) films, filmstrips, charts, transparencies, and other visual aids; (4) video and audio tapes or cassettes; (5) live video and audio broadcasts; (6) programmed instructional materials; (7) mask works; (8) research notes, research data reports, and research notebooks; and (9) other materials or works other than software which qualify for protection under the copyright laws of the United States (see 17 U.S.C. '102 et.seq.) or other protective statutes whether or not registered thereunder.

Mask Work means a series of related images, however fixed or encoded: (i) having or representing the predetermined, three dimensional pattern of metallic, insulating, or semiconductor material present or removed from layers of a semiconductor chip product; and (ii) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product. (See 17 U.S.C. ' 901 et.seq.)

Novel Plant Variety means a novel variety of a sexually reproduced plant. (See 7 U.S.C. ' 2321 et.seq.)

Patentable Materials shall be deemed to refer to items other than software which reasonably appear to qualify for protection under the patent laws of the United States (see 35 U.S.C. ' 101 et seq.) or other protective statutes, including Novel Plant Varieties and Patentable Plants, whether or not patentable thereunder.

Patentable Plant means an asexually reproduced distinct and new variety of plant. (See 35 U.S.C. ' 161.)

Significant Financial Interest means anything of monetary value, including, but not limited to, salary or other payments for services (e.g., consulting fees or honoraria); equity interests (e.g., stocks, stock options, or other ownership interests); and intellectual property rights (e.g., patents, copyrights, and royalties from such rights). *This definition applies equally to the Originator, his or her spouse, or his or her dependent children.*

Software includes one or more computer programs existing in any form, or any associated operational procedures, manuals or other documentation, whether or not protectable or protected by patent or copyright. The term Computer program shall mean a set of instructions, statements, or related data that, in actual or modified form, is capable of causing a computer or computer system to perform specified functions.

Trademarks shall include all trademarks, service marks, trade names, seals, symbols, designs, slogans, or logotypes developed by or associated with the University System or any of its institutions. (See 17 U.S.C. ' 1127.)

Trade Secrets means information including, but not limited to, technical or nontechnical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers which: (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. (See O.C.G.A. ' 10-1-761.)